IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 15.03.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.910 of 2000

V.Chandrasegaran ... Petitioner/Appellant

Vs.

The Commissioner,
Panchayat Union,
Cheyyar,
Tiruvannamalai,
Sambuvarayar District. ... Respondent/Respondent

Writ appeal filed under Clause 15 of the Letters patent against the order dated 18.04.2000 made in W.P.No.8130 of 1993.

For Appellant : Mr.S.Arunachalam

For Respondent : Mr.M.Liagat Ali

JUDGMENT

(Order of the Court was made by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 18.4.2000 made in W.P.No.8130 of 1993, in and by which, the learned single Judge dismissed the said writ petition on the ground that he was appointed only as an N.M.R. Daily wage worker and he has no legal right to claim permanency.

2. Heard the learned counsel appearing for the appellant as well as the respondent-Panchayat Union.

3. For convenience, we shall refer the parties as described in the writ petition. According to the petitioner, in May 1985, he was appointed as an NMR Fitter in the respondent Panchayat Union. He worked as an NMR Fitter continuously for a period of five years. Having regard to the fact that the respondent Union

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was one which has more than 275 pumps, he was sponsored for appointment as an additional Fitter on a regular basis in the time scale of pay applicable to the post of Fitter. A proposal was sent in this regard by the respondent-Panchayat Union to the District Collector through the Divisional Development Officer. On the request of the Divisional Development Officer, the respondent-Panchayat Union passed a resolution resolving to appoint the petitioner as an Additional Fitter on a regular time scale of pay with effect from 1.4.1999. Based on the said resolution, the respondent-Panchayat Union, by an order dated 25.4.1990, appointed the petitioner as an Additional Fitter in the time scale of pay 950-20-1150-25-1500 with effect from 1.4.1990. While so, suddenly, without any notice, the respondent-Panchayat Union has passed an order on 1.4.1993 cancelling the appointment of the petitioner as Additional Fitter after 31.3.1993. Questioning the same, viz., the said order of the respondent is violative of principles of natural justice and patently illegal, the petitioner filed W.P.No.8130 of 1993. The learned single Judge, by the impugned order, after finding that since the writ petitioner was only an NMR, has no right to claim permanency, dismissed the writ petition. Hence, the present writ appeal.

4. It is not in dispute that though initially the petitioner was appointed as an NMR, on the basis of the report of Personal Assistant(General) of the District Collector, Vellore and also considering the fact that the respondent-Panchayat Union possessed 188 hand pumps, the petitioner was appointed in the regular time scale of pay of 950-20-1150-25-1500 as Additional Fitter. The said order was passed on 25.4.1990. No doubt, the appointment order shows that the appointment is temporary. It is further seen that he has continued till 1.4.1993. On the said date, based on the report of the Local Audit Fund Authority and finding that the appointment of the petitioner in the regular time scale of pay is irregular, cancelled the earlier order and posted him as a Fitter. In this regard, it is relevant to note that at the time of posting him in the regular scale of pay, the respondent-Panchayat Union considered the request/suggestion of the Personal Assistant(General) to the District Collector by his letter dated 15.6.1989, which shows that the Panchayat Union, having over and above 100 hand pumps and 30 additional hand pumps can have one additional Fitter. It is also clear from the letter of the P.A. to the District collector date 15.6.1989. The annexure to the said letter shows that at the relevant point of time, the respondent-Panchayat Union was having 188 hand pumps and only one person was handling those pumps. In such circumstances, in the said communication, the respondent-Panchayat Union was permitted to have two more additional Fitters to handle 188 hand pumps. It is also relevant to refer the proceedings of the District Development Officer dated 22.1.1990, in and by which, it was

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intimated to the respondent Commissioner that the Commissioner himself can appoint the additional fitter and thereafter get an approval from the appropriate authority. Based on the above communications, the petitioner was appointed as an Additional Fitter in the time scale of pay on 25.4.1990. Even if we accept that the objection of the Local Audit Fund Authority is right, the only flaw is that there is no approval by the Government. In the light of the details, particularly, the proceedings of the P.A. to the Collector and the District Development Officer as well as the existence of 188 hand pumps in the respondent-Panchayat Union and also of the fact that only one operator was available, we are of the view that the appointment dated 25.4.1990 appointing the petitioner in the regular time scale of pay cannot be faulted with.

5. As pointed out above, the only flaw is his appointment was not approved by the Government. All the above materials were not considered by the learned single Judge while dismissing the writ petition. On the other hand, the learned single Judge proceeded and dismissed the writ petition as if the petitioner was only an NMR and he has filed the said writ petition for regularising his service after completion of 240 days in the calendar year or 4280 days in two calendar years. The approach and the ultimate conclusion of the learned single judge cannot be sustained.

6. It is brought to our notice that pending the writ petition as well as the writ appeal, the petitioner is continuing as Fitter in the scale of pay of Fitter as per order dated 25.4.1990. In view of the fact that his appointment by the respondent-Commissioner has to be approved by the authority viz., Government, a direction is issued to the respondent to take up the matter with the Government, for approval. Till final decision is taken by the Government, in view of the fact that the petitioner had the benefit of an order to continue in the scale of pay, he shall not be disturbed and allowed to continue in the same post. It is made clear that depending upon the decision of the Government, the respondent is at liberty to pass further orders. The writ appeal is allowed to this extent. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Commissioner,
Panchayat Union,
Cheyyar,
Tiruvannamalai,
Sambuvarayar District.

+ one cc to Mr.M.Liagatali, Advocate Sr.No.12583.
+ one cc to Mr.S.Arunachalam, Advocate Sr.No.13162
+ one cc to Government Pleader Sr.No.12816

MS (CO)
RSM/5.4.2006

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